

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

January 6, 2005

A meeting of the Board of Environmental Protection was held on Thursday, January 6, 2005, at the Holiday Inn / Ground Round in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 12:00 - noon with the following individuals present:

**Board:** Ernest Hilton, Nancy Anderson, Irving Faunce, Virginia Plummer, Donald Guimond, Richard Wardwell, Jean T. Wilkinson and Matt Scott

Absent: Nancy Ziegler

<b><u>Staff:</u></b>	<u>Bureau of Air Quality</u>	Andrea Lani
	<u>Bureau of Air Quality</u>	Deb Avalone-King
	<u>Bureau of Land and Water Quality</u>	Mike Mullen
	<u>Office of the Commissioner</u>	Jim Dusch
	<u>Office of the Commissioner</u>	Peter Carney

**Others:** David P. Littell, Deputy Commissioner  
Mary Sauer, Assistant Attorney General  
Cynthia Bertocci, Executive Analyst  
Terry Hanson, Administrative Assistant

***(Meeting adjourned at approximately 3:30 p.m.)***

***Draft***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Deputy Commissioner David Littell reported the following:

Use Attainability Analysis / Ragged and Seboomook: The Non-Governmental Organization Intervenors communicated that they do not intent to challenge the Board's decision regarding the water quality certification for Ragged and Seboomook lakes. FERC issued its 50 year license, and the conservation easement option has been exercised which includes 40% of shoreline on Caucomgomoc Lake and 100% of shoreline on Ragged (*with the exclusion of certain camp lots*). The US Environmental Protection Agency is reviewing the UAA and requested additional information from the Department. Final review comments from EPA are anticipated within the next few weeks. Board Chair commended the work of Dana Murch.

Department Staff Day: The Department thanks Board member Matt Scott for attending and participating at the Department's staff day. Mr. Scott introduced the Evelyn Jepshon award elaborating on former board member Jephson's environmental ethic. This year's recipient was Mr. Paul Mitnik. Paul works in the Bureau of Land and Water Quality serving the citizens of Maine through his quiet manner and excellent scientific work in the area of water quality/water monitoring tasks.

Additionally, this year the Department recognized Kara Tudman as the Rookie of the Year. Ms. Tudman is in the Department's response division operating in the Southern Maine Regional Office. During her first week on-call Ms. Tudman had completed the necessary response training and was tested that same week as she was called to handle a petroleum truck roll-over.

Legislative: The Department will have a list of proposed bills to forward to Board members. Additionally, the 40 reports due to the Legislature this year will be available to BEP members as they become final.

Questions for Deputy Commissioner Littell:

Board member Irving Faunce asked about proposed legislation regarding water quality in the Androscoggin.

*The Deputy Commissioner responded that Commissioner Gallagher and Andy Fisk, Director of the Bureau of Land and Water Quality have been working on this matter. The Department will review the modeling data associated with phosphorus loads prior to taking a formal position on any language in a proposed bill. Paul Mitnick is currently working to verify the data. This data will be used as we request input from the stakeholders interested and participating in the Gulf Island Pond matter.*

Board member Virginia Plummer asked about the progress associated with filling the vacant Board seat.

*Mr. Littell advised that the Governor has been primarily focused on the tax reform issue at this time, but has several good candidates. The Department is hopeful that the Governor will post a candidate this month.*

**B. CHAIRMAN'S COMMENTS:**

Use Attainability Analysis / Ragged and Seboomook: The Chair acknowledged the hard work of Dana Murch. Additionally, the Board received a letter from the Non-Governmental Organizations who participated in the hearing requesting formal acknowledge of the uniqueness of the UAA hearing and its possible precedential value with respect to future UAA hearings. The Chair advised Board members that the reply letter will explain that each case before the Board is unique and future use attainability analyses will be processed in accordance with procedural requirements and as appropriate for the particular situation and need.

Board member Faunce commented on his continued discomfort with staff's use of policy vs rule on the issue of dewatering a littoral zone.

FPL Energy / Wyman Station: As provided for in Chapter 145, FPL Energy has submitted a request for the Board to grant an alternative NOx emission limit for the Wyman Station facility. The facility can't meet the 0.15 lb/mmBTU limit and has requested a limit of 0.18 lbs/mmBTU. DEP staff will review the license amendment request, draft an order, and request that the Board post the order for 30 day public comment and opportunity for public hearing.

**C. EXECUTIVE ANALYST COMMENTS:**

Application for Public Boat ramp at Mere Point, Brunswick: The public hearing has been continued at the request of the applicant. The deadline for Inland Fisheries and Wildlife to submit supplemental information is Friday, January 14th. Intervenors will have an opportunity to amend their pre-filed testimony in response to changes made by IFW. Staff will work with parties to finalize hearing dates.

**D. BOARD CALENDAR:**

**E. DEPARTMENTAL ORDERS:**

Reviewed

**F. EXECUTIVE SESSION:**

None

**II CONSENT AGENDA ITEMS**

The Board voted (8-0-0-1) on a motion to approve as presented consent agenda items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 as presented.

*Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, and Jean T. Wilkinson voted to support the motion. Board member Nancy Zeigler was absent.*

1. HOME CONSTRUCTION and FINANCE, INC., Scarborough – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
2. STEPHEN CHAMBERLIN III and CAROL CHAMBERLIN, Acton – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
3. JOHN CLAIRMONT and DIANE CLAIRMONT and K&K EXCAVATION, INC., Hartford – Administrative Consent Agreement (BLWQ – Land)

4. STEPHEN SMITH, Whitefield – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
5. ELEANOR M. STEARNS, Waterford – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
6. SUSAN CLIFFORD, Hancock – Administrative Consent Agreement (BLWQ – Land)
7. HARVEY ORR and MIKE D. WILLETTE, China – Administrative Consent Agreement (BLWQ – Land)
8. JOHN ROULEAU, JR., Milford – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
9. CYR CONSTRUCTION COMPANY, Presque Isle – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
10. LARRY PAUL, Wiscasset – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
11. MICHAEL D. THOMPSON, Freeport – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
13. BANGOR ABATEMENT, INC., Brewer – Administrative Consent Agreement (BRWM)
14. AIR QUALITY EXPERTS, INC., Kittery – Administrative Consent Agreement (BRWM)

The Board voted (7-0-1-1) on a motion to approve as presented consent agreement item 12.  
*Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell voted to support the motion. Board member Jean T. Wilkinson abstained. Board member Nancy Ziegler was absent*

12. IRVING FOREST PRODUCTS, INC., Nashville Plantation – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)

The Board voted (7-0-1-1) on a motion to approve as presented consent agreement item #15.  
*Board members Nancy Anderson, Irving Faunce, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell and Jean T. Wilkinson voted to support the motion. Board member Donald Guimond abstained. Board member Nancy Ziegler was absent.*

15. CLARENCE THERIAULT, Fort Kent – Administrative Consent Agreement (BRWM)

### **III. Regular Agenda**

1. CHAPTER 102, OPEN BURNING / AMENDMENTS (post to 30-day written comment period)

Staff: Andrea Lani, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to post Chapter 102, Open Burning amendments as presented to a 30-day written comment period. The vote was taken pursuant to 38 M.R.S.A., 341-D and 585-A.

*Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell and Jean T. Wilkinson voted to support the motion. Board member Nancy Ziegler was absent.*

2. CHAPTER 143, NEW SOURCE PERFORMANCE STANDARDS (NSPS) / AMENDMENTS (post to public hearing)

Staff: Deb Avalone-King, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to post Chapter 143, New Source Performance Standards (NSPS) / amendments to public hearing for March 3, at 1:30 pm. The vote was taken pursuant to 38 M.R.S.A.341-D, 585 A, 585 B and 590.

*Board members Nancy Anderson, Irving Faunce, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, and Jean T. Wilkinson voted to support the motion. Board member Nancy Ziegler was absent.*

3. CHAPTER 144, NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANT (NESHAP)

Staff: Deb Avalone-King, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to post Chapter 144, National Emission Standards for Hazardous Air Pollutant (NESHAP) amendments to public hearing for March 3, at 1:30 pm. The vote was taken pursuant to 38 M.R.S.A. 341-D, 585A, 585B, and 590..

*Board members Nancy Anderson, Irving Faunce, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, and Jean T. Wilkinson voted to support the motion. Board member Nancy Ziegler was absent.*

4. 2004 LEGISLATIVE REPORT / SUMMARY OF ACTIVITIES (discussion)

Staff: Cynthia Bertocci, BEP Executive Analyst

The Board voted (8-0-0-1) on a motion to include language in the legislative report recommending registration denial for non-compliant California vehicles.

**INFORMATIONAL SESSION:**

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

Staff: Pete Carney, Office of the Commissioner

**BOARD TO RECONVENE AT 1:30 P.M. TO CONDUCT A PUBLIC HEARING IN THE MATTER OF:**

*Chapter 305, Permit By Rule Standards / Amendments*